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In re Application of
BARBAZETTE et al.
Application No.: 10/618,313
Filing Date: July 10, 2003
Attorney's Docket No.: 34741-926

OFFICE OF PETITIONS

DECISION

This decision is in response to applicants' submission filed August 28, 2006, which includes both a petition to revive under 37 CFR 1.137(b) and a "PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION (MPEP §711.039(c)(I)(A))". The latter petition has properly been treated as a petition under 37 CFR 1.181.

The petition under 37 CFR 1.181 is **GRANTED** for the reasons set forth below.

The petition under 37 CFR 1.137(b) is **DISMISSED** as **MOOT** for the reasons set forth below.

Petition Under 37 CFR 1.181

If applicants can establish nonreceipt of the final Office action mailed January 20, 2006, then the application was never abandoned. In such case, the holding of abandonment will be withdrawn pursuant to 37 CFR 1.181. See MPEP § 711.03(c), para. I.A. The showing must include: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

Items (1)-(3) have been met. Accordingly, the final Office action mailed January 20, 2006 and the Notice of Abandonment mailed July 26, 2006 are hereby VACATED.

Petition Under 37 CFR 1.137(b)

Because the Notice of Abandonment mailed July 26, 2006 has been withdrawn, the petition to revive under 37 CFR 1.137(b) is moot.

This application is being referred to Technology Center AU 2121 for remailing of the final Office action mailed January 20, 2006.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3301.

A handwritten signature in black ink, appearing to read 'D. Stemmer', with a stylized, cursive flourish.

Daniel Stemmer

Legal Examiner

Office of the Deputy Commissioner
for Patent Examination Policy